

SUMMERS, COMPTON, WELLS & HAMBURG

ROBERT F. SUMMERS
RONALD N. COMPTON
RICHARD H. ULRICH
STEPHEN L. WELLS
STEVEN M. HAMBURG*
MICHAEL M. SAYERS
DAVID A. SOSNE*
SUSAN Z. GAMBLE
CAROL STANTON FIALA*
BRIAN K. RULL*
JILL R. REMBUSCH*
BONNIE L. CLAIR*
ELIZABETH A. MURPHY
HOLLY M. MCINTYRE

PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
8909 LADUE ROAD
ST. LOUIS, MISSOURI 63124
(314) 991-4999
FAX: (314) 991-2413
WWW.SCWH.COM

BRIAN J. LAFLAMME
DOUGLAS G. HICKEL*
DANIEL P. RIORDAN
ALAN J. RATCHFORD*

OF COUNSEL:
NEIL H. MILLER
PAMELA D. PERDUE
G. LANE ROBERTS, JR.
JAMES P. GAMBLE, L.L.C.

*ALSO LICENSED IN ILLINOIS

June 19, 2006

Box TTAB - NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451


Re: **Registration No.** 2513616
 Registered Mark: SMART BROOM
 Cancellation No. 92043691
 Our File No. 14429-00002

TTAB

To Whom It May Concern:

Enclosed please find Motion to Set Aside Default Judgment regarding the above matter.

Sincerely,


Ronald N. Compton

RNC:sr
Enclosure
cc: Ms. Linda Skoro



06-22-2006

U.S. Patent & TMO/TM Mail Rcpt Dt. #2

1. On December 4, 2001, registration for the word mark "SMART BROOM" was granted to Respondent as Registration No. 2513616 (the "Registration").
2. On May 25, 2004, an assignment of Registration No. 2513616 from Respondent to TMB Products, L.L.C. n/k/a TMB Products Development, L.L.C. ("TMB") was recorded with the U.S. Patent and Trademark Office on Reel 2975 Frame 0426, thereby making TMB the owner of record of the Registration.
3. On March 13, 2006, TMB and TMB Products, LLC entered into an Asset Purchase Agreement, wherein TMB agreed to sell, transfer, and assign to TMB Products, LLC

certain assets of TMB, including, but not limited to Registration No. 2513616 and the products and its associated goodwill, thereby making TMB Products, LLC the current owner of the mark and its Registration. TMB Products LLC is an interested party because it is the current owner of the business, the goodwill and the registered mark associated with the SMART BROOM trademark.

4. On September 16, 2004, Petitioner filed a Petition for Cancellation of Registration No. 2513616.

5. On September 16, 2004, the Petition for Cancellation of Registration was assigned Cause No. 92043691 and cancellation proceedings were initiated by the Trademark Trial and Appeal Board ("TTAB") against Respondent.

6. Trademark Rule 2.113(c) requires the TTAB to forward a copy of the Petition for Cancellation to the current owner of a registration sought to be cancelled.

7. The TTAB erroneously mailed a copy of the Petition for Cancellation upon Respondent and not to TMB and thus did not comply with Trademark Rule 2.113(c). The TTAB file shows that the Petition for Cancellation was never delivered or forwarded but was returned to the TTAB confirming that no service was made of the Petition for Cancellation on the owner of the mark.

8. The TTAB rules required an answer to the Petition for Cancellation to be filed on October 26, 2004.

9. Due to the TTAB's failure to provide service of process upon any party and notice to TMB, which was the owner of record of the Registration at the time, an answer to the Petition for Cancellation was not timely filed and a notice of default was entered on November 12, 2004.

10. Due to the continued failure to file an answer, default judgment was filed on January 6, 2005, and Registration No. 2513616 was cancelled.

11. At no time did TMB, Respondent or Summers, Compton, Wells & Hamburg, P.C. receive any notice that the Petition for Cancellation had been filed by Petitioner.

12. Based upon the foregoing, neither TMB nor Summers, Compton, Wells & Hamburg, P.C. had notice of the filing of the Petition for Cancellation, and TMB had no notice that any action was to be taken on this matter before the TTAB.

13. Due to its failure to provide notice to the owner of record of the Registration, the TTAB lacked jurisdiction to cancel Registration No. 2513616.

14. This Motion is being made within a reasonable time.


15. Good cause exists for setting aside this judgment for the reasons set forth above, namely that TMB, through no fault of its own and through a mistake by the TTAB, was not served with process to initiate this action, had no notice of the fact that the Petition for Cancellation of Registration No. 2513616 had been filed by Petitioner, and therefore the TTAB lacked jurisdiction to cancel said Registration.

WHEREFORE, Movant moves this Court to set aside the judgment entered against Respondent and in favor of Petitioner on January 6, 2005, reinstate Registration No. 2513616, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Summers, Compton, Wells & Hamburg, P.C.

By:



Ronald N. Compton
Reg. No. 25,843
Attorneys for Movant
8909 Ladue Road
St. Louis, Missouri 63124
(314) 991-4999

CERTIFICATE OF MAILING

I hereby certify that this Motion to Set Aside Default Judgment is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box TTAB, NO FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 and Linda M. Skoro, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on June 19, 2006.

Summers, Compton, Wells & Hamburg, P.C.

By: _____

Ronald N. Compton

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion to Set Aside Default Judgment has been served on Paul D. Supnik by mailing said copy on 19 June, 2006, via Certified Mail, Return Receipt Requested, addressed to: Smart Inventions, Inc., Paul D. Supnik, its Attorney, 9601 Wilshire Boulevard, Suite 828, Beverly Hills, CA 90210-5210.

Summers, Compton, Wells & Hamburg, P.C.

By: _____

Ronald N. Compton